

Message Text

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E.O. 11652: N/A
TAGS: PLOS
SUBJECT: LOS CONFERENCE - HIGHLIGHTS OF APRIL 26

BEGIN SUMMARY

THREE US POLLUTION AMENDMENTS WERE TABLED AND TWO RECEIVED BROAD SUPPORT. IN THE NG-3 SUBGROUP, AMBASSADOR RICHARDSON MADE CLEAR THE US CONSIDERS THE PURPOSE OF THE COUNCIL IS TO ENSURE REPRESENTATION OF SPECIAL INTERESTS. NG-5 DISCUSSED ARTICLES 296 AND 297. THE IRISH FORMULA WAS WIDELY SUPPORTED IN NG-4. END SUMMARY

1. THE NJENGA GROUP (NG-1) DISCUSSED ARTICLE 153 ON REVIEW, BUT THE SESSION PRODUCED NO CHANGES FROM ESTABLISHED POSITIONS.

NJENGA HANDED OUT HIS PERSONAL TENTATIVE REDRAFTS OF ARTICLES 140, 143 AND THE ANNEX II PROVISIONS
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RELATING TO TRANSFER OF TECHNOLOGY. (THESE REDRAFTS, WHICH ARE NOT COMPLETELY ACCEPTABLE TO THE U.S., WILL BE SENT SEPTEL.)

2. THE KOH GROUP (NG-2) HELD A TECHNICAL DISCUSSION ON ARTICLES 174 AND 175 CONCERNING THE FINANCING OF THE AUTHORITY. AFTER THESE UNCONTROVERSIAL ARTICLES WERE

DISCUSSED, THE GROUP MOVED ON TO FINANCIAL ARRANGEMENTS BETWEEN CONTRACTORS AND THE AUTHORITY. DISCUSSION ON THIS TOPIC WILL CONTINUE APRIL 27.

3. THE SMALL GROUP CHAIRED BY EGYPT IN ENGO'S NG-3 (ORGANS OF THE AUTHORITY) HELD TWO MEETINGS. THE MANDATE OF THE GROUP WAS TO RESOLVE DIFFERENCES OVER THE SWEDISH PROPOSAL TO INCREASE GEOGRAPHIC REPRESENTATION IN EACH REGION (UNDER ARTICLE 159 PARA 1(E)) FROM 1 TO 2. HOWEVER, THE GROUP ITSELF RECOGNIZED THE NEED TO BROADEN AGENDA TO INCLUDE AT LEAST ALL OF PARA 1 AND PARA 7 VOTING PROVISIONS. DISCUSSION CENTERED ON WHETHER THE STATED PURPOSE OF SUBPARA (E), TO ENSURE GEOGRAPHIC REPRESENTATION, TAKES PRECEDENCE OVER THE SPECIAL INTEREST REPRESENTATION IN SUBPARAS (A) - (D) IN THE EVENT OF THE ALMOST INEVITABLE CONFLICT BETWEEN THE TWO PRINCIPLES.

4. AMBASSADOR RICHARDSON MADE CLEAR THAT THE U.S. CONSIDERS THE PURPOSE OF THE COUNCIL, UNLIKE THAT OF THE ASSEMBLY, IS TO ENSURE REPRESENTATION OF THE SPECIAL INTERESTS INVOLVED. HE ALSO REFERRED TO THE NEED TO DISCUSS PARA 7 AND THE US DESIRE TO HAVE PROVISIONS FOR CONCURRENT MAJORITIES IN 3 OF THE 4 INTEREST GROUPS TO ENSURE ADEQUATE REPRESENTATION OF THE IMPORTANT SPECIAL INTERESTS INVOLVED. THE DISCUSSION EVOLVED INTO A NUMBERS GAME WITH PROPOSALS AND COUNTER-PROPOSALS. DISCUSSION WILL RESUME APRIL 27.

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5. NEGOTIATING GROUP 5 CONCLUDED ITS INITIAL DEBATE ON SETTLEMENT OF DISPUTES CONCERNING THE LIVING RESOURCES OF THE ECONOMIC ZONE. TEN DELEGATIONS ADDED THEIR SUPPORT TO THE MEXICAN OR COASTAL STATE PROPOSAL TO DELETE ARTICLE 296(4) AND THUS ELIMINATE ALL ADJUDICATION OF ECONOMIC ZONE FISHERIES DISPUTES: ANGOLA, CHINA, EGYPT, EL SALVADOR, MEXICO, NICARAGUA, OMAN, PAKISTAN, SENEGAL AND YUGOSLAVIA. EIGHT COUNTRIES ENDORSED ONE OR MORE OF THE VARIOUS PROPOSALS TO EXPAND ADJUDICATION UNDER 296(4): FRANCE, FEDERAL REPUBLIC OF GERMANY (FRG), GERMAN DEMOCRATIC REPUBLIC (GDR), HUNGARY, ISRAEL, JAPAN, SINGAPORE AND ZAMBIA. TWO MORE PROPOSALS WERE ADDED TO THIS GROUP. A PREVIOUS SUGGESTION BY SWAZILAND TO DELETE SUBPARAGRAPHS (A), (B) AND (C) FROM 296(4) WAS TAKEN UP AND SUPPORTED BY GDR AND ZAMBIA. JAPAN, SUPPORTED BY THE FRG, SUGGESTED ADDING "UNLESS THE EXERCISE EXCEEDS THE SCOPE OF SUCH DISCRETION" TO THE END OF 296(4)(A).

6. ARTICLE 296(1), INTENDED TO PROTECT COASTAL STATES FROM ABUSE OF PROCESS, WAS CRITICIZED AS UNCLEAR, MISPLACED, EXCESSIVELY BROAD AND INCONSISTENT WITH JUDICIAL

PRACTICE. ISRAEL, SWITZERLAND AND FRG PROPOSED AMENDMENTS REQUIRING THE DEFENDANT STATE TO OBJECT EXPRESSLY THAT A CASE IS UNFOUNDED AND SUGGESTED THAT THE PHRASE "FRIVOLOUS OR VEXATIOUS" IN 296(1)(B) IS REDUNDANT OR SUPERFLUOUS. THE GDR, SINGAPORE, YUGOSLAVIA AND ZAMBIA ALSO EXPRESSED GENERAL DISSATISFACTION WITH THE PLACEMENT AND PHRASING OF THE PARAGRAPH.

7. THE GDR AND JAPAN SUPPORTED THE PREVIOUS USSR-PROPOSED REVISION OF 297(1)(B) TO EXCLUDE COASTAL STATE "MONITORING OF COMPLIANCE WITH ITS LAWS" FROM THE PROTECTION OF THE MILITARY EXCEPTION. THE FRG PROPOSED THE FOLLOWING AMENDMENT TO 297(1)(B) WHICH WOULD SIMPLY LIMIT THE LAW

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ENFORCEMENT EXCEPTION: "DISPUTES CONCERNING MILITARY ACTIVITIES, INCLUDING MILITARY ACTIVITIES BY GOVERNMENT VESSELS AND AIRCRAFT ENGAGED IN NON-COMMERCIAL SERVICE AND, WITH THE EXCEPTION OF THOSE CASES WHERE THE COURT OR TRIBUNAL HAS JURISDICTION UNDER ARTICLE 296, LAW ENFORCEMENT ACTIVITIES IN THE EXERCISE OF SOVEREIGN RIGHTS OR JURISDICTION PROVIDED FOR IN THE PRESENT CONVENTION."

8. PERU, SUPPORTED BY EL SALVADOR, OFFERED THE FOLLOWING FOR 297(1)(B), (WHICH WOULD HAVE THE EFFECT OF SUBJECTING THE MILITARY EXCEPTION TO THE GRANT OF JURISDICTION IN

296(2)): "(B) DISPUTES CONCERNING MILITARY ACTIVITIES, INCLUDING MILITARY ACTIVITIES BY GOVERNMENT VESSELS AND AIRCRAFT ENGAGED IN NON-COMMERCIAL SERVICE, SUBJECT TO THE EXCEPTIONS TO IN ARTICLE 296." PERU ALSO SUGGESTED REVISING THE FIRST LINE OF 296(2)(C) TO ADD "OR ANY OTHER STATE" AFTER "COASTAL STATE".

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9. THE CHAIRMAN (STAVROPOLOUS OF GREECE) OBSERVED THAT THREE NEW ELEMENTS HAD EMERGED WHICH MIGHT FORM THE BASIS OF A COMPROMISE. ONE WAS THE CONCEPT OF ABUSE OF RIGHTS AS A BASIS FOR INVOKING COMPULSORY DISPUTE SETTLEMENT. DURING THE MEETING, MEXICO HAD MADE THE FOLLOWING PROPOSAL FOR A "GENERAL PROVISION" ON THE SUBJECT: "ALL STATES SHALL EXERCISE THE RIGHTS AND JURISDICTIONS RECOGNIZED IN THIS CONVENTION IN SUCH A MANNER AS NOT TO HARM UNNECESSARILY OR ARBITRARILY THE RIGHTS OF OTHER STATES OR THE INTERESTS OF THE INTERNATIONAL COMMUNITY." (ALSO SUPPORTING AN ABUSE OF RIGHTS PROVISION WERE ANGOLA, CHILE, FRANCE AND PERU). THE SECOND ELEMENT (SUGGESTED BY FRANCE AND PORTUGAL) WAS RECOGNITION OF THE NEED TO BALANCE A COASTAL STATE'S RIGHTS AGAINST ITS DUTY TO THE INTERNATIONAL COMMUNITY IN REGARD, FOR EXAMPLE, TO CONSERVATION OF LIVING RESOURCES. THE THIRD NEW PROSPECT WAS THAT OF USING COMPULSORY CONCILIATION FOR ALL OR SOME ECONOMIC ZONE DISPUTES (SUGGESTED BY MEXICO AND FRANCE).

10. NEGOTIATING GROUP 4 (CONTINENTAL SHELF/REVENUE SHARING) HEARD WIDE SUPPORT FOR THE IRISH FORMULA (IF). NOTING ITS TECHNICAL VIABILITY AND EQUITABLE RESULTS, ARGENTINA, FRANCE, NEW ZEALAND, CANADA, NORWAY AND URUGUAY EXPRESSED THEIR RESOLUTE APPROVAL OF THE IF. MALAYSIA AND THE REPUBLIC OF KOREA INDICATED, FOR THE FIRST TIME, THEIR SUPPORT FOR THE IF AS A FAIR ACCOMMODATION. BRAZIL, WHILE SUPPORTING ARTICLE 76 OF THE ICNT, RESERVED ITS POSITION PENDING FURTHER CONSIDERATION OF THE IF.

11. THE SOVIET UNION REITERATED THE PRESUMED MERITS OF ITS NEW SUGGESTION (A 100 MILE OUTER LIMIT OF THE SLOPE

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OR MARGIN WHERE IT EXTENDS BEYOND THE EEZ, COUPLED WITH REVENUE SHARING). IT WAS SUPPORTED BY YUGOSLAVIA,

POLAND, BULGARIA AND CUBA. COLOMBIA INDICATED THAT THE PROPOSAL CONTAINED CRITERIA WHICH MERITED FURTHER STUDY.

12. MEMBERS OF THE LL/GDS AGAIN LINKED ACCEPTANCE OF COASTAL STATE SOVEREIGN RIGHTS OVER THE SHELF BEYOND 200 MILES TO RESOLUTION OF LL/GDS ACCESS TO LIVING RESOURCES IN THE EEZ. AUSTRIA SIGNIFICANTLY NOTED THAT THE IF MERITED SERIOUS CONSIDERATION PROVIDED THE LL/GDS LIVING RESOURCES POSITION COULD BE ACCOMMODATED. IN RESPECT TO THE IF, AUSTRIA SUGGESTED THAT THE 60-MILE CRITERION OF THE HEDBERG OPTION BE REDUCED TO 30 MILES, SINCE THE 60-MILE-DISTANCE-FROM-THE-SLOPE CRITERION COULD LEAD IN SOME CASES TO ASSERTIONS OF SOVEREIGN RIGHTS EVEN BEYOND THE OUTER EDGE OF THE MARGIN. AUSTRIA FURTHER STATED THAT IT COULD ACCEPT A NON-MANDATORY PROVISION IN RESPECT TO LL/GDS RIGHTS TO NON-LIVING RESOURCES ON THE CONTINENTAL MARGIN OR A RESOLUTION OF SIMILAR EFFECT ADOPTED BY THE CONFERENCE.

13. THE US TABLED THREE AMENDMENTS TO ARTICLE 212 AT AN INFORMAL MEETING OF COMMITTEE III, (FULL TEXT FOLLOWS). THE FIRST AMENDMENT PROPOSED THAT STATES ACTING THROUGH IMCO PROMOTE THE ADOPTION OF SHIP ROUTING SYSTEMS DESIGNED TO MINIMIZE THE THREAT OF ACCIDENTS CAUSING POLLUTION OF THE MARINE ENVIRONMENT. THE SECOND, PROPOSED TO HIGHLIGHT THAT THE INTERNATIONAL RULES AND STANDARDS REFERRED TO IN THE ARTICLE INCLUDE THOSE RELATED TO PROMPT NOTIFICATION OF DISCHARGES OR PROBABLE DISCHARGES, BUT THAT THE NOTICE ITSELF COULD NOT BE USED IN A CRIMINAL PROCEEDING BY THE COASTAL STATES AGAINST THE MASTER PROVIDING IT. THE THIRD AMENDMENT ADDS LANGUAGE CLARIFYING THE INTENT OF THE POLLUTION TEXT THAT STATES CAN SET DISCHARGE STANDARDS WITHIN THEIR TERRITORIAL SEA

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MORE STRINGENT THAN THOSE INTERNATIONALLY ADOPTED, WITHOUT DENYING OR HAMPERING INNOCENT PASSAGE. THERE WAS TIME ONLY FOR DISCUSSION OF THE FIRST AMENDMENT WHICH RECEIVED SUBSTANTIAL SUPPORT AND NO OPPOSITION.

14. THE SMALL INFORMAL NEGOTIATING GROUP (CHAIRIED BY VALLARTA) MET IN THE AFTERNOON TO CONSIDER THE THREE U.S. AMENDMENTS. IT APPROVED THE FIRST U.S. AMENDMENT AS:

ADD THE FOLLOWING TO THE END OF THE FIRST SENTENCE OF PARAGRAPH 1 OF ARTICLE 212,

"AND PROMOTE, IN THE SAME MANNER, THE ADOPTION, WHENEVER APPROPRIATE, OF ROUTING SYSTEMS DESIGNED TO MINIMIZE THE THREAT OF ACCIDENTS WHICH MIGHT CAUSE POLLUTION OF THE MARINE ENVIRONMENT, INCLUDING THE COASTLINE AND RELATED INTERESTS OF COASTAL STATES."

15. THE THIRD AMENDMENT, CLARIFYING THE COASTAL STATES
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RIGHT TO SET DISCHARGE STANDARDS RECEIVED GENERAL SUPPORT AND AFTER SOME DISCUSSION WAS APPROVED ON THE FOLLOWING FORM:

ADD TO THE END OF THE FIRST SENTENCE OF ARTICLE 212(3)

"INCLUDING VESSELS EXERCISING THE RIGHT OF INNOCENT PASSAGE."

THE SECOND AMENDMENT ON NOTIFICATION WAS NOT FULLY DISCUSSED BUT RECEIVED GENERAL SUPPORT. (ITS FINAL VERSION WILL BE SENT WHEN AGREED.) THE USSR QUALIFIED ITS SUPPORT FOR THE U.S. AMENDMENTS BY STATING THAT THESE WERE THE ONLY CHANGES IN THE TEXT IT COULD AND WOULD ACCEPT. NORWAY TOOK THE SAME POSITION. RICHARDSON

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